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APPENDIX 1

9/16/2019 ORDER GRANTING MOTION TO QUASH

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 14

19STCV17949 September 16, 2019
MARCUS DANIEL SILVER vs BERTRAM SIEGEL, et al. 8:45 AM

Judge: Honorable Terry Green
Judicial Assistant: M. Ventura
Courtroom Assistant: P. Cortez

CSR: Wil Wilcox, CSR#9178
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Marcus Daniel Silver

For Defendant(s): David R. Singer

NATURE OF PROCEEDINGS: Hearing on Motion to Quash Service of Summons;

Hearing on Demurrer - with Motion to Strike (CCP 430.10);

Case Management Conference

Pursuant to Government Code sections 68086, 70044 and California Rules of Court, rule 2.956, Wil Wilcox CSR#9178, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matters are called for hearing.

Court after reading and considering all moving party papers, makes the following ruling:

The Motion to Quash Service of Summons is GRANTED.

The Demurrer with Motion to Strike and Case Management Conference are taken off calendar.

The Court orders the Complaint filed by Marcus Daniel Silver on 05/22/2019 dismissed without prejudice.

Any remaining court dates in this department are advanced to this date and vacated.

Clerk is to give notice.

Certificate of Mailing is attached.

APPENDIX 2

04/27/2021 REMITTITUR

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DANIEL P. POTTER, CLERK

DIVISION 3

Los Angeles County Superior Court

MARCUS DANIEL SILVER,
Plaintiff and Appellant,
v.
BERTRAM SIEGEL et al.,
Defendants and Respondents.
B301917
Los Angeles County Super. Ct. No. 19STCV17949

***** REMITTITUR *****

I, Daniel P. Potter, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on January 15, 2021 and that this order, opinion or decision has now become final.

Defendants shall recover their costs on appeal

Witness my hand and the seal of the Court
affixed at my office this

Apr 27, 2021

DANIEL P. POTTER, CLERK

by: Z. Clayton, Deputy Clerk

cc: All Counsel (With attachment)
File

Filed 1/15/21

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MARCUS DANIEL SILVER, Plaintiff and Appellant, v. BERTRAM SIEGEL et al., Defendants and Respondents.	B301917 Los Angeles County Super. Ct. No. 19STCV17949

APPEAL from an order of the Superior Court of Los Angeles County, Terry Green, Judge. Affirmed.

Marcus Daniel Silver, in pro. per., for Plaintiff and Appellant.

Jenner & Block, David R. Singer, AnnaMarie A. Van Hoesen, and Camila A. Connolly for Defendants and Respondents.

INTRODUCTION

Plaintiff and appellant Marcus Daniel Silver (plaintiff) appeals from the trial court's September 16, 2019 order granting the motion to quash service of summons for lack of personal jurisdiction brought by defendants and respondents Bertram Siegel, Carole Siegel, David Siegel, and Two Sigma Investments, LP (defendants).[1] Plaintiff contends the trial court erred "in interpreting and following relevant rules and laws, especially regarding peremptory challenges and deadlines for filing responses."[2] We affirm.

BACKGROUND

On May 22, 2019, plaintiff filed an unverified complaint in the Superior Court of the State of California for the County of Los Angeles. The complaint asserts claims for negligence, infliction of emotional distress, fraud, and conspiracy to commit fraud against defendants. The Siegels are plaintiff's relatives. David Siegel, plaintiff's cousin, is a founding partner of Two Sigma Investments, LP. Plaintiff sent defendants copies of the

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[1] Defendants' unopposed motion to augment the record, filed on July 6, 2020, is granted.

[2] Plaintiff's challenge to Judge Holly J. Fujie's July 30, 2019 order accepting defendants' peremptory challenge under section 170.6 of the Code of Civil Procedure is not properly before us. That ruling may be reviewed only by a writ of mandate. (See *In re Sheila B.* (1993) 19 Cal.App.4th 187, 195.) Further, plaintiff's notice of appeal listed only the September 16, 2019 order. We therefore pass this contention without further consideration.

complaint via "US Priority Mail." This mailing did not include any summons, which had not yet been issued by the court.

On May 30, 2019, plaintiff mailed defendants the following documents: (1) copies of the complaint; (2) copies of the court's summons, dated May 30, 2019; (3) proof of service forms; and (4) acknowledgement of receipt of summons forms. Plaintiff directed these documents to defendants' respective addresses in New York. Plaintiff concedes the acknowledgment of receipt forms were never returned, "arguably rendering service of the Summons ineffective" until July 8, 2019, when defendants filed a notice of removal.

On July 8, 2019, defendants removed the action to federal court based on diversity jurisdiction. On July 9, 2019, the federal court issued an order of remand, finding Two Sigma Investments, LP had not included sufficient citizenship information about two of its members. Accordingly, the case was remanded back to the Superior Court.

On July 15, 2019, plaintiff filed a request for entry of default in the Superior Court. On July 23, 2019, the Superior Court denied plaintiff's request because a notice of removal to federal court had been filed on July 8, 2019, there was a "[s]tay on the case," and the acknowledgment of receipt forms had not been signed and dated by defendants or persons authorized to accept service.

Meanwhile, on July 16, 2019, defendants filed a peremptory challenge to the assigned judicial officer, Judge Fujie, under section 170.6 of the Code of Civil Procedure.[3] On July 19,

[3] Undesignated statutory references are to the Code of Civil Procedure.

2019, the court denied the challenge, noting that the notice of removal to federal court had been filed on July 8, 2019 and, therefore, it has no jurisdiction over the case.

Because the Superior Court had not received the order of remand from the federal court, on July 23, 2019 defendants filed a Notice of Remand, and attached the federal court's July 9, 2019 order of remand as an exhibit.

On July 26, 2019, defendants refiled the peremptory challenge to Judge Fujie. On July 30, 2019, Judge Fujie issued a minute order stating that defendants' peremptory challenge "was timely filed, in proper format, and is accepted." The case was reassigned to Judge Terry Green for all future proceedings.

On August 8, 2019, defendants filed a motion to quash service of summons for lack of personal jurisdiction, supported by five declarations. Defendants contended they are not subject to general or specific jurisdiction in California. The Siegels maintain their permanent residences in New York, where they are also citizens. In addition, none of the individual defendants lives in California, owns property in California, or maintains any business presence in California. Two Sigma Investments, LP is a limited partnership governed by the laws of Delaware, with its primary place of business in New York; none of its partners are citizens of California and it has no registered agents in California. Defendants also concurrently filed a demurrer and motion to strike punitive damages.

Plaintiff filed a combined opposition to the demurrer, motion to strike, and motion to quash. He did not, however, submit any evidence to support the exercise of personal jurisdiction over defendants. Instead, he relied on his unverified complaint.

On September 16, 2019, the court conducted a hearing on the motions and demurrer. During the hearing the court stated, "I don't see any basis for jurisdiction in California." The Court further stated, "There is no evidence of contacts with California, substantial or insubstantial," and "there's no evidence" of purposeful availment. After hearing from both sides, the court granted defendants' motion to quash, took the demurrer and motion to strike off calendar as moot, and dismissed the lawsuit.

DISCUSSION

The most fundamental rule of appellate review is that the judgment or order challenged on appeal is presumed to be correct, and "it is the appellant's burden to affirmatively demonstrate error." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) " 'All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) To overcome this presumption, an appellant must provide a record that allows for meaningful review of the challenged order. (*Ibid.*)

In addition, parties must provide citations to the appellate record directing the court to the supporting evidence for each factual assertion contained in that party's briefs. When an opening brief fails to make appropriate references to the record to support points urged on appeal, we may treat those points as waived or forfeited. (See, e.g., *Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP* (2011) 201 Cal.App.4th 368, 384; *Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 798–801 [several contentions on appeal "forfeited" because appellant failed to provide a single record citation demonstrating it raised those contentions at trial].) "Any statement in a brief

concerning matters in the appellate record—whether factual or procedural and no matter where in the brief the reference to the record occurs—*must be supported by a citation to the record.*" (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2013) ¶ 9:36, p. 9-12, citing Cal. Rules of Court, rule 8.204(a)(1)(C).)

Further, "an appellant must present argument and authorities on each point to which error is asserted or else the issue is waived." (*Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 867.) Matters not properly raised or that lack adequate legal discussion will be deemed forfeited. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656.)

An appellant has the burden not only to show error but prejudice from that error. (Cal. Const., art. VI, § 13.) If an appellant fails to satisfy that burden, his argument will be rejected on appeal. (*Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963.) "[W]e cannot presume prejudice and will not reverse the judgment in the absence of an affirmative showing there was a miscarriage of justice. [Citations.] Nor will this court act as counsel for appellant by furnishing a legal argument as to how the trial court's ruling was prejudicial. [Citations.]" (*Ibid.*)

Plaintiff's briefs are insufficient on a multitude of grounds. Mainly, his briefs fail to include a single citation to the clerk's transcript. And to the extent his briefs contain citations to legal authorities, plaintiff fails to develop his arguments by applying those authorities to the facts in this case. (See *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287 ["we may disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by

which the appellant reached the conclusions he wants us to adopt"].) Plaintiff, therefore, has forfeited all his contentions on appeal. We nonetheless briefly address several of plaintiff's arguments to the extent they are supported by citations to legal authorities.

Plaintiff contends defendants should have filed the notice of removal to federal court within 30 days of purportedly receiving copies of the complaint by mail on May 24, 2019. As his sole authority, plaintiff cites *Michetti Pipe Stringing, Inc. v. Murphy Bros.* (11th Cir. 1997) 125 F.3d 1396, 1398, which is no longer good law. In *Michetti*, the Eleventh Circuit held that the 30-day removal period under 28 U.S.C. § 1146 "begins to run when a defendant actually receives a copy of a filed initial pleading by any means." The United States Supreme Court reversed, however, holding that the time to remove "is triggered by simultaneous service of the summons and complaint, or receipt of the complaint, 'through service or otherwise,' after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service." (*Murphy Bros. v. Michetti Pipe Stringing, Inc.* (1999) 526 U.S. 344, 347–348.) Thus, defendants' time to remove the case to federal court was not triggered until they were formally served with the complaint and summons.

Plaintiff also contends the motion to quash was not timely filed after the federal court remanded the case back to the state court. Section 430.90, subdivision (a)(1), provides 30 days to file a motion to quash service of summons "from the day the original court receives the case on remand." Here, the federal court issued its order remanding this case back to the Superior Court on July 9, 2019. Defendants filed the motion to quash thirty days later,

on August 8, 2019. Even if the Superior Court received the case on remand on July 9, 2019—the very same day that the federal court issued the order of remand—defendants timely filed their motion.

Finally, plaintiff contends the motion to quash should have been denied because defendants made numerous general appearances thereby conceding to the state court's jurisdiction. Specifically, he argues that defendants made general appearances by filing the notice of removal, filing a peremptory challenge to Judge Fujie, and simultaneously filing the demurrer and motion to strike with the motion to quash. We disagree.

First, filing a notice of removal cannot constitute a general appearance because section 430.90 expressly provides time for a defendant to bring a motion to quash service of summons following a remand to state court. Accordingly, the time for defendant to respond to the complaint commenced when the federal court remanded the case. (§ 430.90, subd. (a)(2) [providing 30 days to respond to the complaint upon remand after removal].) Put differently, the statute confirms that when a defendant removes an action to federal court, the defendant does not waive the right to later challenge the state court's personal jurisdiction over the defendant.

Second, it is well established that a party can file a peremptory challenge under section 170.6 without making a general appearance. (See *La Seigneurie U.S. Holdings, Inc. v. Superior Court* (1994) 29 Cal.App.4th 1500, 1506; *Loftin v. Superior Court* (1971) 19 Cal.App.3d 577, 578–579.)

Third, section 418.10, subdivision (e), expressly provides that a defendant may make a motion to quash service of summons for lack of jurisdiction and "simultaneously answer,

demur, or move to strike the complaint." Section 418.10, subdivision (e)(1), further provides, "[N]o act by a party who makes a motion under this section, including filing an answer, demurrer, or motion to strike constitutes an appearance, unless the court denies the motion made under this section." Thus, a defendant "may raise objections to personal jurisdiction along with any other defenses without being deemed to have waived the jurisdictional objection." (*Roy v. Superior Court* (2005) 127 Cal. App.4th 337, 342 [holding that defendants do not waive jurisdictional arguments by concurrently filing a demurrer with motion to quash].)

In sum, defendants did not concede to the Superior Court's jurisdiction.

DISPOSITION

The September 16, 2019 order is affirmed. Defendants shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.

APPENDIX 3

02/03/2021 ORDER DENYING PETITION FOR REHEARING

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

MARCUS DANIEL SILVER, Plaintiff and Appellant, v. BERTRAM SIEGEL et al., Defendants and Respondents.	B301917 Los Angeles County Super. Ct. No. 19STCV17949 **Order Denying Petition for Rehearing**

BY THE COURT: *

The petition for rehearing filed February 1, 2021 is denied.

Edmon Lavin Dhanidina

* EDMON, P. J. LAVIN, J. DHANIDINA, J.

APPENDIX 4

04/21/2021 CALIFORNIA SUPREME COURT ORDER

Court of Appeal, Second Appellate District, Division Three - No. B301917

S267150

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MARCUS DANIEL SILVER, Plaintiff and Appellant,

v.

BERTRAM SIEGEL et al., Defendants and Respondents.

The petition for review is denied.

Kruger, J., was recused and did not participate.

CANTIL-SAKAUYE

Chief Justice

APPENDIX 5

07/19/2019 ORDER DENYING 1st PEREMPTORY CHALLENGE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 56

19STCV17949
MARCUS DANIEL SILVER vs BERTRAM SIEGEL, et al.

July 19, 2019
2:22 PM

Judge: Honorable Holly J. Fujie
Judicial Assistant: O. Chavez/N. Marshalian (JAT)
Courtroom Assistant: B. Chavez

CSR: None
ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

SEE NUNC PRO TUNC MINUTE ORDER OF 07/19/2019 2:33 PM

NATURE OF PROCEEDINGS: Court Order re Defendant's 170.6

The Court notes that the Notice of Removal to Federal Court was filed July 8, 2019.

Non-Appearance Case Review re Federal Court is scheduled for 10/17/2019 at 03:00 PM in Department 56 at Stanley Mosk Courthouse.

Defendant's 170.6 filed on July 16, 2019 is denied.

The Court has no jurisdiction over this case. On the Court's own motion, the Case Management Conference scheduled for 09/24/2019 is advanced to this date and vacated .

Certificate of Mailing is attached.

APPENDIX 6

07/30/2019 ORDER GRANTING 2nd PEREMPTORY CHALLENGE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 56

19STCV17949
MARCUS DANIEL SILVER vs BERTRAM SIEGEL, et al.

July 30, 2019
1:56 PM

Judge: Honorable Holly J. Fujie
Judicial Assistant: O. Chavez
Courtroom Assistant: B. Chavez

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order Re: Defendant's 170.6

The Court reviews the Peremptory Challenge filed by Carole Siegel (Defendant) , David Siegel (Defendant) , Two Sigma Investments lp (Defendant) and Bertram Siegel (Defendant) on 07/26/2019 pursuant to Code of Civil Procedure section 170.6 and finds that it was timely filed, in proper format, and is accepted.

Good cause appearing and on order of the Court, the above matter is reassigned to Judge Terry Green in Department 14 at the Stanley Mosk Courthouse for all further proceedings.

If any appearing party has not yet exercised a peremptory challenge under Code of Civil Procedure section 170.6, peremptory challenges by them to the newly assigned judge must be timely filed within the 15 day period specified in Code of Civil Procedure section 170.6, with extensions of time pursuant to Code of Civil Procedure section 1013 if service is by mail. Previously non-appearing parties, if any, have a 15-day statutory period from first appearance to file a peremptory challenge (Government Code section 68616(1)).

All future hearings in this department are advanced to this date and taken off calendar.

Plaintiff is to give notice.

Certificate of Mailing is attached.

APPENDIX 7

07/15/2019 ORDER OF REMAND

United States District Court
Central District of California
Office of the Clerk

Cristina M. Squieri Bullock
Chief Deputy of Administration
350 West 1st Street, Suite 4311
Los Angeles, CA 90012

Kiry K. Gray
District Court Executive / Clerk of Court
350 West 1st Street, Suite 4311
Los Angeles, CA 90012

Sara Tse Soo Hoo
Chief Deputy of Operations
255 East Temple Street, Suite TS-134
Los Angeles, CA 90012

July 9, 2019

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012

Re: Case Number: 2:19-cv-05838-PA-PLA
Previously Superior Court Case No. 19STVC17949
Case Name: Marcus Silver et al v. Bertram Siegel et al

Dear Sir/Madam:

Pursuant to this Court's ORDER OF REMAND issued on 7/9/19, the above-referenced case is hereby remanded to your jurisdiction.

Attached is a certified copy of the ORDER OF REMAND and a copy of the docket sheet from this Court.

Please acknowledge receipt of the above by signing the enclosed copy of this letter and returning it to the location shown below. Thank you for your cooperation.

United States Courthouse
255 East Temple Street, Suite TS-134
Los Angeles, CA 90012

Respectfully,

Clerk, U.S. District Court

By: */s/ Benjamin Moss*
Deputy Clerk
Benjamin_Moss@cacd.uscourts.gov

Encls.
cc: Counsel of record

Receipt is acknowledged of the documents described above.

July 15, 2019
Date

Clerk, Superior Court

PAUL CRUZ
By: _____
Deputy Clerk

APPENDIX 8

06/18/2019 ORDER GRANTING PERMISSION TO FILE

Appellate Courts Case Information

2nd Appellate District

Change court

Docket (Register of Actions)

Silver v. Siegel et al.
Division 3
Case Number B301917

Date	Description	Notes
11/01/2019	Notice of appeal lodged/received.	Filed 10/16/2019 by Marcus Silver
11/01/2019	Default notice sent-appellant notified per rule 8.100(c).	No Fee Rec'd
11/14/2019	Filing fee.	Civil filing fee paid for by Marcus Silver.
11/15/2019	Civil case information statement filed.	Plaintiff and Appellant: Marcus Daniel Silver Pro Per
12/12/2019	Appellant's notice designating record on appeal filed in trial court on:	11/15/2019 designating clerk's transcript and reporter's transcript
03/19/2020	Received:	POS for NOA filed on 10/18/2019
03/24/2020	Received copy of document filed in trial court.	Amended notice of filing of notice of appeal dated Oct. 18, 2019
03/25/2020	Record on appeal filed.	C-1 (181 Pages) R-1
04/30/2020	Note:	Appellant's opening brief was rejected via TrueFiling for the following reasons: -Missing electronic bookmarks -Missing certificate of interested entities -Missing service on trial judge re opening brief
05/29/2020	Received document entitled:	Received appellant's opening brief. Need permission to file. Brief does not comply with 1. Citations to the record. 2. Certificate of Interested person and entities not submitted.
06/18/2020	Order filed.	Permission to file appellant's opening is granted.Edmon, P.J.

APPENDIX 9

09/16/2019 REPORTER'S TRANSCRIPT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 14 HON. TERRY GREEN, JUDGE

MARCUS DANIEL SILVER,

PLAINTIFF,

VS. CASE NO. 19STCV17949

BERTRAM SIEGEL, ET AL.,

DEFENDANTS.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, SEPTEMBER 16, 2019

APPEARANCES:

PLAINTIFF PRO SE:

MARCUS DANIEL SILVER, PRO SE
MARCUSDANIELSILVER@GMAIL.COM
8613 FRANKLIN AVENUE
LOS ANGELES, CA 90069
PHONE: 310.945.6105

ATTORNEY FOR DEFENDANTS:

JENNER & BLOCK
BY: DAVID R. SINGER, ESQ.
DSINGER@JENNER.COM
633 WEST 5TH STREET, SUITE 3600
LOS ANGELES, CA 90071
PHONE: 213.239.5100
FAX: 213.239.2216

REPORTED BY: WIL S. WILCOX, CSR 9178
COURT REPORTER PRO TEMPORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 14 HON. TERRY GREEN, JUDGE

MARCUS DANIEL SILVER,

PLAINTIFF,

VS.) CASE NO. 19STCV17949

BERTRAM SIEGEL, ET AL.,

DEFENDANTS.

I, WIL S. WILCOX, CSR NO. 9178, OFFICIAL PRO TEMPORE COURT REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 4-300 COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE ON MONDAY, SEPTEMBER 16, 2019.

DATED THIS 17TH DAY OF MARCH 2020.

Wil S. Wilcox

WIL S. WILCOX, CSR NO. 9178
OFFICIAL PRO TEMPORE COURT REPORTER

CASE NUMBER: 19STCV17949

CASE NAME: MARCUS DANIEL SILVER
BERTRAM SIEGEL, ET AL.

LOS ANGELES, CALIFORNIA; MONDAY, SEPTEMBER 16, 2019

DEPARTMENT 14 **HON. TERRY GREEN, JUDGE**

REPORTER: WIL S. WILCOX
CSR NO. 9178

TIME: 9:36 A.M.

APPEARANCES: (AS HERETOFORE NOTED.)

-OOO-

THE COURT: SILVER VERSUS SIEGEL.

MR. SILVER: GOOD MORNING, YOUR HONOR.

THE COURT: GOOD MORNING.

MR. SINGER: GOOD MORNING, YOUR HONOR.

THE COURT: STATE YOUR APPEARANCE, PLEASE.

MR. SILVER: MARCUS SILVER, PRO SE.

MR. SINGER: DAVID SINGER OF JENNER & BLOCK ON BEHALF OF ALL DEFENDANTS.

GOOD MORNING, YOUR HONOR.

THE COURT: GOOD MORNING. HAVE A SEAT, PLEASE.

THIS IS A MOTION TO QUASH SERVICE AND A DEMURRER. WE DON'T HAVE TO GET TO THE DEMURRER BECAUSE I HAVE READ THE MOTION TO QUASH SERVICE, AND I DON'T SEE ANY BASIS FOR JURISDICTION IN CALIFORNIA.

I'VE READ THREE DECLARATIONS. TWO OF THE THREE ARE PEOPLE IN THEIR 80S. ONE IS 87. ALL THREE SAY THEY HAVE NO CONTACTS WITH CALIFORNIA AT ALL. A COUPLE SAY THEY'VE HAD NO CONTACTS WITH THE PLAINTIFF SINCE 2009.

YOU KNOW, YOU EITHER HAVE TO HAVE GENERAL JURISDICTION OR SPECIFIC JURISDICTION. FOR GENERAL JURISDICTION YOU HAVE TO HAVE SUBSTANTIAL SYSTEMATIC CONTACTS WITH THE STATE OF CALIFORNIA.

FOR SPECIFIC JURISDICTION YOU HAVE TO HAVE A PURPOSEFUL AVAILMENT OF THE BENEFITS AND LAWS OF THE FORUM STATE IN CALIFORNIA, AND THERE HAS TO BE A CONNECTION BETWEEN THOSE CONTACTS AND THE INJURY COMPLAINED OF, AND IT HAS TO LASTLY BE FAIR, JUST, AND EQUITABLE. NONE OF THESE BOXES ARE CHECKED.

MR. SILVER: WELL --

THE COURT: HANG ON A SECOND.

NONE OF THESE BOXES ARE CHECKED. THERE IS NO EVIDENCE OF CONTACTS WITH CALIFORNIA, SUBSTANTIAL OR INSUBSTANTIAL, AND AS I SAID, SOMEBODY VISITED HERE IN 2014 OR SOMETHING.

AND PURPOSEFUL AVAILMENT, THERE'S NO EVIDENCE OF THAT. AND AS FAR AS WHETHER THIS WOULD BE FAIR, JUST, AND EQUITABLE, WE HAVE NEW YORK RESIDENTS, AT LEAST TWO OF WHOM ARE ELDERLY. CAN I CALL AN 80-YEAR OLD ELDERLY WHEN I'M 72. WELL, REGARDLESS, THEY ARE ELDERLY, AND I SEE NO BASIS FOR DRAGGING THEM ACROSS THE COUNTRY TO BE HERE.

APPARENTLY, THIS CASE HAS A SORDID HISTORY. YOU GUYS HAVE BEEN TO FEDERAL COURT OR SOMETHING AND THEN BACK.

MR. SINGER: WE WERE REMOVED, YOUR HONOR, BUT FOR THE LP, OUR MISTAKE, WE FAILED TO GO THROUGH EACH MEMBER, AND WE JUST REFERRED TO THEM GENERALLY.

THE COURT: WHAT, YOU DID AN INCOMPLETE DIVERSITY; IS THAT WHAT IT WAS?

MR. SINGER: CORRECT. THE COURT CORRECTLY CALLED US OUT FOR GENERALLY SAYING NONE OF THE MEMBERS HAD CITIZENSHIP HERE, AND THE COURT SAID THAT YOU NEED TO ACTUALLY GO THROUGH EACH MEMBER AND SAY WHAT STATE THEY ARE CITIZENS OF.

THE COURT: OKAY. SO, DO YOU WANT TO BE HEARD? I READ YOUR PAPERS SUCH AS THEY ARE, MR. SILVER. YOU SAY A LOT, VERY LITTLE OF WHICH IS PERTINENT TO THESE MOTIONS, AND YOU INTRODUCE NO EVIDENCE. OTHER THAN THAT, I HAVE NO PROBLEM WITH IT.

MR. SILVER: WELL, I WOULD SAY THAT THEY'VE ALREADY ACKNOWLEDGED JURISDICTION BECAUSE THEY'VE BEEN BEFORE TWO OTHER JUDGES IN THIS COURT SYSTEM IN THIS STATE.

THE COURT: WELL, IT DEPENDS IF THE APPEARANCES ARE SPECIAL OR GENERAL. I THINK PREPARING TO REMOVE THE CASE TO FEDERAL COURT IS NOT A GENERAL APPEARANCE.

REGARDLESS, I HAVE NO EVIDENCE OF ANY OF THIS STUFF. NOBODY PRESENTED ME WITH ANYTHING WHERE I COULD CHECK ANY OF IT. I HAVE NO EVIDENCE FROM YOU. I JUST HAVE EVIDENCE FROM THE DEFENSE.

AND SO WHILE YOUR POINTS AND AUTHORITIES MAKE INTERESTING READING, THEY DID NOT REALLY RING ANY BELLS. I UNDERSTAND IT'S A DIFFICULT TIME. YOU BOUGHT APPARENTLY EXPENSIVE PROPERTY IN WEST HOLLYWOOD OR SOMETHING --

MR. SILVER: YES.

THE COURT: -- AND THE MARKET WENT SOUTH AND YOU GOT

FORECLOSED ON. APPARENTLY, THAT WAS IN LITIGATION IN NEW YORK WITH OCWEN AND SOME OTHER LENDER, AND YOU FEEL THAT THE INDIVIDUAL DEFENDANTS, WHO ARE RELATED TO YOUR COUSINS OR AUNTS OR SOMETHING; RIGHT?

MR. SILVER: YES.

THE COURT: -- SOMEHOW WERE INVESTORS IN THESE COMPANIES AND WERE ACTING IN NEFARIOUS WAYS. I DON'T KNOW, BUT THAT'S WATER WELL UNDER THE BRIDGE HERE. THE PLACE TO TRY THIS CASE IS IN NEW YORK IF IT'S GOING TO BE TRIED ANYWHERE.

OKAY. SO I'VE GOT TO MOVE ON. I HAVE TO GET DOWNSTAIRS. I ORDERED A LARGE PANEL FOR A TRIAL STARTING TODAY. THANK YOU FOR BEING HERE. THANK YOU FOR WAITING.

THE MOTION TO QUASH SERVICE OF SUMMONS IS GRANTED. THE MOTION FOR DEMURRER AND TO STRIKE ARE OFF CALENDAR AS MOOT. THE MATTER IS DISMISSED.

GOOD LUCK TO YOU, SIR.

MR. SILVER: THANK YOU.

MR. SINGER: THANK YOU, YOUR HONOR.

* * *

(THE RECESS WAS TAKEN AT 9:41 A.M.)

APPENDIX 10
08/19/2019 COMBINED OPPOSITION

Marcus Silver (pro se)
8613 Franklin Avenue
Los Angeles, CA 90069
Telephone (310) 945 6105

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MARCUS SILVER (pro se) and posthumously on behalf of FRANCINE SILVER Plaintiff v BERTRAM SIEGEL, CAROLE SIEGEL,DAVID SIEGEL, TWO SIGMA INVESTMENTS, LP. Defendants	] Case No. 19STCV17949]] Assigned to the Hon. Terry] Green, Dept. 14]]] COMBINED OPPOSITION] TO DEMURRER,] OPPOSITION TO MOTION] TO STRIKE FOR PUNITIVE] DAMAGES AND] OPPOSITION TO MOTION] TO QUASH SERVICE FOR] LACK OF PERSONAL] JURISDICTION]]

Defendant(s) have already defaulted, their response is too late, devoid of merit and fatally defective. Demurrers must be filed within 30 days of service of the complaint (extensions do not extend time to demurrer) **Extensions to respond to the complaint AFTER the initial 30 day period do NOT keep open the time to demurrer**! CCP § 430.40 Code of Civil Procedure § 430.40 states: **(a)** A person against whom a complaint or cross-complaint has been filed may, **within 30 days after service of the complaint** or cross-complaint (specifically not the summons), demur to the complaint or cross-complaint. Plaintiff filed the present action against the Defendant on May 22, 2019 and mailed Defendant(s) a copy of the complaint via priority mail. The complaint was received on May 24, 2019. The time to file a demurrer and also a peremptory challenge is within 30 days of receiving the complaint or by no later than June 23, 2019 but Defendant waited over 2 months until August 8, 2019 to file the demurrer - Way too late! The two peremptory challenges were also belatedly filed, the first on July 16, 2019 which was subsequently denied on July 19, 2019, then one week later on July 26, 2019 the second, fatally defective 170.6 challenge was filed but nevertheless granted. Regarding the Notice of Removal, the rules state that "a notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting

30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter." Plaintiff(s) did not satisfy the latter option because they were required to serve but they did satisfy the first option because the initial pleading/complaint was served via Priority Express Mail on May 22, 2019 and was received by May 24, 2019 but even if it took 10 days to be delivered, it would mean a timely request for removal would have needed to be made by no later than July, 2, 2019 but no such request was made until July, 8, 2019 - Almost an entire week too late and rendering the notice devoid of merit. The fact that it was allowed puts plaintiff in an unfair and compromised position because instead of having to respond by no later than July 9th, 2019 to the summons which was served via priority mail on May 30, 2019, the defendants argue that they had until August 9th, 2019 but they are incorrect and defaulted because no reply brief has ever been filed and the demurrer and peremptory challenge were both void and fatally defective because they were late and should have been filed within 30 days of receiving the complaint or as previously mentioned by June, 24, 2019 and not August 8th, 2019. The Notice of Removal was also untimely and results in an unfair extension of time for Defendant(s) to have responded.

Plaintiff also adamantly, categorically and vehemently denies that there was a meet and confer prior to the untimely filing of the demurer. Plaintiff admits a conversation took place on June 17, 2019 between Plaintiff and Defense counsel David Singer and AnnaMarie A. VanHoesen. This was the first and only

conversation at one point he had to ask opposition counsel if they had even had a chance to review the complaint yet because they seemed very new to the case and also could only have been retained soon before the discussion. Contact information and settlement opportunities were discussed. Absolutely none of the issues in the Demurrer were discussed at all and were only brought to plaintiff's attention when the demurrer was received on August 9, 2019. Had the issues raised in the demurrer been discussed and known during the first and only joint conversation on June 17, 2019 then defense counsel should have been able to timely file the demurrer instead of waiting almost 2 months because at this stage the issues are clearly more of a very desperate and very belated after thought. Furthermore, had Defendant's Counsel actually raised the issue of Plaintiff's legal capacity to represent his mother Francine Silver (the Decedent) Marcus would have immediately pointed out that he is the sole undisputed heir and that the Court of Appeals in case # B289266 had already recognized Marcus Silver's legal capacity to litigate and represent his decedent mother. Under the doctrine of res judicata the matter has already been decided in favor of the plaintiff in the court of appeals and should not have to be re-litigated but in any case Plaintiff can satisfy all required elements to prove he is authorized to represent Francine Silver.

Even if the Demurrer was timely filed and a valid meet and confer had occurred, it's arguments are devoid of merit. Plaintiff filed the complaint within all the applicable statute of limitations. Decedent Francine Silver died on November 22, 2019 after suffering from numerous ailments including Alzheimer's and dementia.

like recovering for emotional distress having to be filed within 6 months of her death and this case was subsequently timely filed on May 22, 2019 which was the last possible day (Plaintiff wanted to give Defendant's every last chance to respond to the questions that had been raised but calls were only returned by their counsel Matt Sienna).

Plaintiff(s) were initially unaware that they had been defrauded for many years or in fact decades and did not even suspect or learn of it until at the earliest around late May 2016 when Bertram starting probing and asking Marcus about his plans on litigation for the home. Marcus at this stage had recently found out that Two Sigma was a major investor in Ocwen who was trying to foreclose and decided to ask Bertram how he found out the home had been in foreclosure litigation in the first place and why he did not let plaintiff(s) know Defendant(s) were major investors in Ocwen, the company defrauding plaintiff(s). As mentioned in the initial complaint, Bertram could not excuse himself from the conversation fast enough and that was the last time Marcus spoke with any of the Defendant(s). The last communication between Bertram and Carole Siegel and Francine Silver occurred several days later in late May 2016 when Bertram and Carole spoke with Francine to advise that they would no longer be sending checks or corresponding and this is reflected in banking and telephone records.

The extent of fraud and scope of malevolent, tortious behavior did not become clear or evident until early 2017 so the statute of limitations regarding fraud was adhered to and to this day has not yet tolled and even if it had tolled, Defendant(s)

absent of excusable neglect, is as good as no response and their default should be entered.

The Defendant(s) Motions should be denied and are based upon false, inaccurate or perjerous testimony. Defendant Bertram declares under penalty of perjury that he has not been in contact with the Plaintiff(s) except for sporadic contact prior to 2014 but the email from Bertram in the complaint is from September 7, 2015 regarding his visit to Plaintiff(s) - see attachment 4, page 3 of 3 in the complaint (dated September 7, 2015). .Although Bertram and Carole declare they have not been in contact with plaintiff(s) since 2014 and 2009 respectively, banking, phone, travel and email records contradict this false assertion. Plaintiff(s) dispute not having had contact with Carole Siegel since 2009 because it is simply a bald faced lie. David Siegel asserts there has been no contact since 2015 but the complaint contains a New years card from 2018. Plaintiff was clearly contacted at least by mail as recently as 2018.

Defendants were properly served and have already admitted they received the complaint. It is clear and undisputed by AnnaMarie A. VanHossen's declaration in the defendant's opposition to motion for default judgment that both the complaint and summons were served respectively on May 22, and May 30, 2019. How would defendant's have known to hire defense counsel if they had not been served? This should be sufficient evidence for the court to recognize that the defendants were aware of the complaint and it did not come upon them by surprise or without valid time to respond. Under section 415.40 a plaintiff must provide "evidence

a signed return receipt or other evidence." but in this case the other evidence is defense counsel's own testimony that the summons and complaint were both received and that defendants were obviously aware they had been served or would not have retained counsel..

The declarations by Bertram and Carole Siegel are full of lies and inconsistencies. If someone will lie and cheat their own mother and sister and clearly lacks morality what can really be expected? The motion against punitive damages is full of lies, inconsistencies and devoid of merit. The issues in the motion against jurisdiction has already been decided by the District Court. The declarations by Defendant(s) were at best incorrect at worse perjerous and in either case non-believable. The torts occurred in California and this court has obvious jurisdiction. If Defendant's arguments prevail then anyone can come to California from another state, commit a tort and avoid culpability unless prosecuted in the state or country they claim to reside in. With regard to defendant's motion to strike punitive damages it should be denied because it lacks merit, is factually incorrect and is conclussory. Plaintiff's claim is sufficiently well pled and refers to many facts that would substantiate an award for punitive damages but the point is moot because plaintiff has already offered to waive punitive damages unless the case goes to trial and in that event it will be for a jury to decide whether or not punitive damages should be awarded and if so the amount. There is no good cause to quash service of the summons on the ground of lack of jurisdiction, to dismiss the action on the ground of inconvenient forum or for any other reason, it is not inconvenient

and have visited California numerous times. This court exercises personal jurisdiction because the plaintiff(s) were living in Los Angeles and the torts occurred in Los Angeles and the defendants were in Los Angeles. It would be absurd and result in a breakdown of the State's judicial system if citizens of other states or countries could commit torts in Los Angeles and not be held accountable in our own courts but instead in the courts of their own countries or states. Under section 410.10 of California Code of Civil Procedure, a court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States. Defendants all met with Plaintiff(s) or maintained regular contact with and visited Plaintiff(s) including most recently as in September, 2015 as per the email attached in the complaint. Regular phone contact was maintained until late May 2016, prior to that Francine had maintained regular contact throughout her entire life and loved and trusted her family members. Bertram had previously been entrusted with the keys to the Plaintiff(s) home in new York when they resided there until 1997 and had been held in very high regard by Francine until her last year or two of life when she finally discovered the true nature of Bertram. Defendant(s) are subject to general jurisdiction because defendant(s) maintained substantial, systematic and continuous relations with plaintiff(s). Defendant(s) are also subject to specific jurisdiction because they visited Los Angeles, met with Plaintiff(s), the subject controversy is related to or arises out of the defendant(s) contact with the state and the assertion of personal jurisdiction comports with fair play and substantial justice. The three part test to

meet with Plaintiff(s) and thereby availed themselves of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of it's laws. The claim arises at least in part from the forum related activities and the exercise of jurisdiction is reasonable. As explained in the complaint, the defendant(s) acts were on-going and intentional, expressly aimed at the forum state, caused harm in the forum state and knew the their actions would cause harm in the forum state. Exercising Jurisdiction is reasonable. Defendant(s) have access to private jets and first class travel and will not be significantly inconvenienced. California has an interest in protecting it's citizens and their property, effective relief is not equally convenient in New York and the torts did not occur there, the interstate judicial system's interest in obtaining the most efficient resolution of the controversies is satisfied as is the shared interest of the several States in furthering substantive social policies. The Court has reasonable Jurisdiction.

Regarding punitive damage for NIED and IIED, Plaintiff(s) alleged facts that demonstrated Defendant(s) were conscious of an extreme risk to Plaintiff(s) as a result of their intentional actions, acted despicably and failed to exercise a duty of due care.

Plaintiff(s) did not expect or seek to get "bailed out" and did not expect or want any help but did not expect to get pestered for confidential information and deceived and should have been made aware that there was a major conflict of interest before Defendant(s) pestered them for the information. The harm suffered was more than just purely economic. Plaintiff alleged facts that indicate

Defendant(s) conduct was meant to cause injury to the Plaintiff(s) and also engaged in on-going despicable conduct with a willful and conscious disregard of the rights and safety of the Plaintiff(s). Oppression occurred because Plaintiff(s) were subjected to cruel and unjust hardship in conscious disregard for their rights. Fraud occurred because their was intentional misrepresentation and concealment of material facts known to the defendants but hidden from Plaintiff(s) and that caused injury. Defendant(s) conduct was reprehensible.

Plaintiff Francine Silver was for over 90 years besotted with and concerned for her as she put it her "baby brother"s welfare. It was only in the last year or two of her demise that she had to recognize the extent of his depraved and morally despicable and reprehensible behavior. Plaintiff(s) could not have suspected that while prying for information Bertram was vicariously invested in the companies that Plaintiff(s) were in active litigation with.

In summary, the demurer is fatally defective because it is too late and the motions for punitive damages to be struck and for the complaint to be quashed for lack of personal jurisdiction are also not only too late but also devoid of merit, substance and believability and clearly include inaccurate/perjerous declarations. Defendant(s) will evidently lie, cheat, steal from and outwit anyone they can. Plaintiff(s) have been victims of fraud and do not seek a financial windfall, they seek justice.

Despite unlimited resources, knowledge of applicable deadlines and representation by a prestigious international law firm Defendants other arguments are speculative, conclussory, too late and devoid of believability and merit. The Defendants conduct is abominable and devoid of morality. They will tarnish a Judges character with a baseless and unfounded peremptory challenge(s) and submit untruthful affidavits and testimony in order to accomplish their objectives. The motions and the demurrer must all be denied and absent of excusable neglect, the Court should enter the Defendant's default and grant judgement in favor of plaintiff(s).

Respectfully,

Marcus Silver August 19, 2019

APPENDIX 11
06/18/2020 APPEAL BRIEF

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

Marcus Daniel Silver	]	
	]	
Plaintiff and Appellant	]	
	]	Court of Appeal No.
v.	]	B301917
	]	
Bertram Siegel, et al.	]	
	]	Superior Court No.
Respondent(s) and Appellee(s)	]	19STCV17949
	]	
_____	]	

Appeal from an Order of the

Stanley Mosk Superior Court,

County of Los Angeles

Hon. Terry Green, Judge

Marcus Silver (pro se)

8613 Franklin Avenue

Los Angeles, CA 90069

Tel. 310 945 6105

TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: 19STCV17949
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: MARCUS SILVER (PROSE). FIRM NAME: STREET ADDRESS: 5613 FRANKLIN AVE CITY: LOS ANGELES STATE: CA ZIP CODE: 90069 TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: 3109456105 ATTORNEY FOR (*name*):	SUPERIOR COURT CASE NUMBER: B301917
APPELLANT/ PETITIONER: MARCUS SILVER RESPONDENT/ REAL PARTY IN INTEREST: BERTRAM SIEGEL etal.	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): MARCUS SILVER
2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest (*Explain*):
(1)		
(2)		
(3)		
(4)		
(5)		

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 5/15/2020

MARCUS SILVER
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2017]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.488
www.courts.ca.gov

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION

APPELLANT'S OPENING BRIEF

STATEMENT OF THE CASE

Appellant Marcus Silver filed the complaint on May 22, 2019 on behalf of himself and his deceased Mother, Francine Silver. The complaint alleged negligence, gross negligence, fraud by concealment, conspiracy to defraud, negligent infliction of emotional distress and intentional infliction of emotional distress.

Appellant(s) and Appellee(s) are relatives. The claim stems not entirely but in large part from the fact that Appellee(s) somehow mysteriously learned that Appellant(s) were in high level litigation with GMAC and Ocwen. Appellant(s) were pestered, mocked, insulted and taunted in a passive aggressive fashion while Appellee(s) garnered highly confidential, personal information only available to a close family member or highly trusted person and without disclosing that there was an obvious conflict of interest because they were major investors in both GMAC and Ocwen.

The thrust of this appeal however is not based so much upon the

merit and strength of the powerful and disturbing arguments in Appellant(s) timely brief and nor is it significantly based on the weak, belated and void arguments of the Appellee(s). Instead it is based largely upon apparent errors made by the court in interpreting and following relevant rules and laws, especially regarding peremptory challenges and deadlines for filing responses.

Appellant(s) Initial Complaint was filed on May 22, 2019. The complaint was served on out of State Appellee(s) via U.S. Priority Mail and admittedly received by Appellee(s) on May 24, 2019.

The Summons was served separately on May 30, 2019 also via U.S. Priority Mail. No Acknowledgment of Receipt form was ever returned.

The deadline to file a written response **other than a Demurrer or Notice of Removal** is 30 days after service of the Summons.

The deadline to file a **Notice of Removal or Demurrer** is not the same as filing other types of responses because instead of running from the time the Summons is served, it runs from the time the Complaint is received (5/24/19) resulting in a 6/23/19 deadline.

Appellant(s) argue that Appellee(s) failed to file a timely, conforming response to the initial complaint because they did not file their Notice of Removal until 7/8/19 (15 days past the deadline) so on 7/15/19 a request for entry of default was made. Appellee(s) opposed on 7/16/19 and the request for default was later denied on 7/23/19 because the Notice and Acknowledgment of Receipt forms had not been returned and also because the belated Notice of Removal was filed on 7/8/19.

One day after the 7/8/19 filing, on 7/9/19, the Notice of Removal was denied due to a question of citizenship, but had there been time for Appellant(s) to object, it would have been argued that the Notice of Removal should have never been accepted or filed after the 6/23/19 deadline had expired.

After making their first General Appearance with the 7/8/19 Notice of Removal, Appellee(s) were effectively served and went on to make numerous additional General Appearances including Declarations, an Initial Peremptory Challenge that was denied and then a Second Challenge that was errantly granted a week later and all of these General Appearances were made before Appellant(s) suddenly felt that they were in the wrong Jurisdiction! This ultimately resulted in the filing of the untimely and void Motion to Quash on August 8, 2019.

The reason Appellant(s) believe the Motion to Quash was untimely and void is because Appellee(s) conceded to the jurisdiction of the court and were effectively served on 7/8/19 when they filed the Notice of Removal. The Motion to Quash must be filed within 30 days of being served with the Summons which effectively left a deadline of no later than 8/7/19 to file but the Motion to Quash was not filed until 8/8/19 so the deadline was missed.

Even if the deadline had not been missed, Appellee(s) made numerous General Appearances prior to filing the Motion to Quash and by making these General Appearances Appellee(s) had conceded to the court's jurisdiction and waived the right to future jurisdictional arguments including motions to quash, even if timely.

Appellee(s) argue that they should have 30 days from the 7/9/19 Notice of Remand from Federal Court to file a response. One of the issues to be resolved and clarified is whether a Notice of Removal that is filed 15 days past the applicable deadline should then have a knock on effect and give Appellee(s) an extra 30 days to respond. Appellant believes an extension in time to respond should only apply providing the Notice of Removal is timely filed otherwise what is the point of having a 30-day deadline?

On September 16, 2019 a hearing was held and Judge Green ordered the belated Motion to Quash Service of Summons to be granted, the Demurrer and Motion to Strike to be taken off calendar and the Complaint dismissed. Appellant now respectfully appeals this order.

STATEMENT OF APPEALABILITY

This Appeal is from the judgment of the Los Angeles County Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1)

STATEMENT OF FACTS

1. The initial complaint was filed on 5/22/19.

2. Appellee(s) received the initial complaint via priority mail on May 24, 2019.

3. The Summons was later served via US Priority Mail on May 30, 2019.

4. The deadline to file a notice of removal was 30 days after the 5/24/19 receipt of the **Initial Complaint** or by 6/23/19.

5. An untimely Notice of Removal was filed 15 days too late on July 8, 2019.

6. Appellee(s) failed to file a timely conforming response to Appellant(s) summons and complaint and thereby defaulted and waived their rights to future arguments but because they made numerous general appearances prior to filing the Motion to Quash, it also means they recognized the court's jurisdiction and waived the right to future arguments including Motions to Quash.

7. A motion for Default Judgment was filed on July 15, 2019.

8. An objection to the motion for Default Judgment was filed on July 16, 2019 and was later granted on July 23, 2019.

9. On July 16, 2019 Appellee(s) made a Peremptory Challenge which was denied on July 19, 2019. One week later on July 26, 2019 a second Peremptory Challenge was made and granted despite being late and non-conforming.

10. On August 8, 2019 Appellee(s) filed a belated Motion to Squash service of summons for lack of personal jurisdiction, a Motion to Strike punitive damages and a belated Demurrer although there had not been a meet and confer.

11. On August 19, 2019 Appellant(s) filed a combined

Opposition to the Demurrer, Motion to Strike for punitive damages and Opposition to Motion to Quash for lack of personal service.

12. On September 9, 2019 defendants replied in support of the Motions and Demurrer.

13. On September 16 2019 the Court granted the Motion to Quash Service of Summons and took the Demurrer with Motion to Strike off calendar. The complaint was dismissed without prejudice due to a lack of jurisdiction and this appeal was subsequently timely filed on October 16, 2019.

ARGUMENT

NOTICE OF REMOVAL SHOULD NOT HAVE BEEN FILED OR ACCEPTED

The **Initial Complaint** was filed on May 22, 2019 and Appellee(s) were served via US Priority Mail and received the Initial Complaint two days later on May 24, 2019.

The **Summons** was served separately via priority mail on May 30, 2019 but the Acknowledgment of Receipt Forms were never

returned, arguably rendering service of the Summons ineffective until 7/8/19 when Appellee(s) appeared by filing a Notice of Removal. By filing the Notice of Removal, Appellee(s) also conceded to the court's jurisdiction and were undeniably effectively served the Summons by their appearance as of 7/8/19.

The deadline for filing a Notice of Removal is not the same as the deadline for a written response to a summons. Under 28 U.S. Code §1446 Procedure for removal of civil actions section (b)(1) Requirements; "*The notice of removal of a civil action or proceeding shall be filed* ***within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading*** *setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant,* ***whichever is shorter***".

Also see Murphy Brothers, Inc. *v.* Michetti Pipe Stringing, Inc.certiorari to the United States Court of Appeals for the Eleventh Circuit no. 97-1909 where the Court reversed and remanded, instructing the District Court to remand the action to state court and emphasizing the statutory words "receipt ... or otherwise," the Eleventh Circuit held that the defendant's receipt

of a faxed copy of the filed initial pleading sufficed to commence the 30-day removal period and that Murphy filed the removal notice 14 days too late under § 1446(b), which specifies, in relevant part, that the notice "**shall be filed within thirty days after the receipt by the defendant, *through service or otherwise,* of a copy of the [complaint].**"

In this case, the complaint was served on May 22, 2019 via US Priority Mail and was received on May 24, 2019 triggering a June 23, 2019 deadline for a Notice of Removal but Appellee(s) did not file until over two weeks later on July 8, 2019. The very next day on July 9, 2019 the Notice of Removal was denied due to citizenship issues as explained and addressed in the ruling but because it was filed 15 days too late, it should never have been accepted, filed or ruled on in the first place and it should not have then resulted in an extension of time to file a responsive pleading or avoid a default.

California Code, Code of Civil Procedure - CCP § 430.90 states:"*(a) Where the defendant has removed a civil action to federal court without filing a response in the original court and the case is later remanded for improper removal, the time to respond shall be as follows:*

(1) If the defendant has not generally appeared in either the original or federal court, then 30 days from the day the original court receives the case on remand to move to dismiss the action pursuant to Section 583.250 or to move to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, if the court has not ruled on a similar motion filed by the defendant prior to the removal of the action to federal court.

(2) If the defendant has not filed an answer in the original court, then 30 days from the day the original court receives the case on remand to do any of the following:

(A) Answer the complaint.

(B) Demur or move to strike all or a portion of the complaint if: (i) an answer was not filed in the federal court, and (ii) a demurrer or motion to strike raising the same or similar issues was not filed and ruled upon by the original court prior to the removal of the action to federal court or was not filed and ruled upon in federal court prior to the remand. If the demurrer or motion to strike is denied by the court, the defendant shall have 30 days to answer the complaint unless an answer was filed with the demurrer or motion to strike.

As clear from the aforementioned, the time to file the Notice of Removal must be calculated from the date the Complaint is received or by no later than 6/23/19. Because the Notice of Removal was filed over two weeks too late and never should have been filed or accepted in the first place, it is clearly not intended that a defaulting party can then belatedly invoke CCP § 430.90 ignore the filing deadline and their default and then get a 30 day extension in time after the case is remanded for the Appellee(s) to avail themselves of any of the aforementioned options. The notice of removal **must be timely filed within 30 days of receipt of the initial complaint for the extension to apply**. If, like in this case where the notice was apparently errantly accepted on the 45th day, the Notice of Remand should have automatically been rejected and no extensions should be allowed because it was already 15 days too late.

ONLY ONE PEREMPTORY CHALLENGE IS ALLOWED

Despite the original Judge Holly Fujie having essentially taken no action or done anything for either party to reasonably question her impartiality or fairness, an initial Peremptory Challenge was filed on 7/16/19 and promptly denied but then a second untimely Peremptory Challenge was filed a week later on 7/23/19 and even though it was late and only one challenge is allowed, it was errantly granted and Judge Green was then assigned.

The governing law under 170.6 states "*If directed to the trial of a civil cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 15 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 15 days after the appearance.*"

The case was assigned on 5/24/19 but Appellee(s) had failed to appear until the 7/8/19 filing of the untimely Notice of Removal. 15 days from this appearance meant there was a 7/23/19 deadline to file a challenge. The first challenge was arguably timely filed on July 16, 2019 and so was within the 15 day deadline of the 15 days late Notice of Removal but in any event was denied on July 19, 2019. Although clearly past the 7/23/2019 deadline, the second belated 170.6 Challenge was filed on 7/26/2019 and was then improperly granted.

The court erred in granting the challenge because there can be only one peremptory challenge (CCP § 170.6(a)(3) and it has to be timely filed before the due date - not after! The second challenge should never have been filed or granted and Judge Fujie who had never taken any actions that would reasonably lead to a question of her impartiality should never have been removed.

THE MOTION TO QUASH SHOULD HAVE BEEN DENIED

The Motion to Quash was void and should have never been filed because the applicable 8/7/19 deadline had passed prior to it's filing and also because Appellee(s) had previously made numerous General Appearances thereby conceding to the court's jurisdiction and waiving the right to all future arguments over jurisdiction including motions to quash.

The governing law regarding motions to quash, CCP 418.10 states "*a defendant on or before the last day of his or her time to plead or within any further time that the court for good cause may allow, may serve and file a notice of motion for one or more of the following purposes (1) to quash service of summons on the ground of lack of jurisdiction of the court*".

The Appellee(s) were effectively served with the Summons at the very latest on 7/8/19 when they appeared by filing the 15 day late Notice of Removal which was rejected the next day on 7/9/19 over a question of citizenship.

Appellee(s) argue that they had 30 days from the time the Notice of Removal was remanded on 7/9/19 to file a timely response or

on or before 8/8/19 in which case their motion to quash was timely filed on 8/8/19.

Appellant(s) argue that the 30 days to respond ran at the very latest from the date the summons was effectively served on 7/8/19 when Appellee(s) filed the Notice of Removal. Appellant(s) also argue that although the Notice of Removal was rejected the very next day over citizenship issues, because it was filed 15 days past the applicable deadline and should have never been accepted or filed in the first place, it should not then upon it's rejection in turn lead to a 30 day extension in the time to plead. The deadline to plead should have been 30 days after the 7/8/19 service of the summons or by 8/7/19 for the motion to quash to be timely but the motion was not filed until 8/8/19.

Regardless of whether the motion to quash was timely filed or not and regardless of the strength of any of it's arguments, declarations or evidence, the motion was fatally flawed from the outset and should have never been filed in the first place because numerous General Appearances had already occurred prior to the filing and these appearances meant that Appellee(s) conceded to the courts jurisdiction.

The General Appearances included the 7/8/19 Notice of Removal, 7/16/19 Objection to Entry of Default, 7/16/19 Declaration, 7/16/19 First Peremptory Challenge and the 7/26/19 Second Peremptory Challenge - All these General Appearances were made prior to the 8/8/19 filing of the Motion to Quash and before Appellee(s) apparently defaulted and then realized they might be in the wrong jurisdiction!

Because of the Appellee(s)' numerous prior General Appearances in Two Courts and before Two Judges it was simply too late to argue jurisdictional issues because the jurisdiction of the court(s) had already been conceded to. Appellant tried to mention this at the hearing but was initially simply told to shush (page 2, line 11 of Reporter's Transcript --).

Judge Green stated that he did not think a Notice of Removal constituted a General Appearance (page 3, line 19 of Reporter's transcript) but whether he is right or wrong, Appellant argued that other prior General Appearances were in fact made before two other Judges (page 3, line 13 of Reporter's transcript). The only time Appellee(s) identified an appearance as a "Special Appearance" was on the actual belated Motion to Quash, everything else prior constituted a General Appearance.

A General Appearance occurs when the responding party takes part in the action or in some manner recognizes the authority of the court to proceed. Such participation operates as consent to the court's exercise of jurisdiction in the proceeding and waives all objections based on lack of personal jurisdiction, defective process, or service of process and can occur simply by filing responsive documents or an appearance in court. This is true even where defendant expressly disclaims an intent to submit to the court's jurisdiction. See Neihaus v. Sup.Ct. (Vaillancourt) (1977) 69 Cal.App.3d 340, 345 - in that case an answer contained a statement that "***defendant does not intend to subject his person to the jurisdiction of this court***"; **held general appearance, objections waived.**

If Defendant has previously demurred, answered or moved for a transfer of the action, like in this case, there is no point in filing a motion to quash service. The previous pleading or motion constitutes a General Appearance which waives any jurisdictional objection whatsoever. A motion to quash service of summons **must be filed before any answer, demurrer or other response is filed** otherwise the defendant has waived their right to object pursuant to Code of Civil Procedure section 418.10(e)(3).Filing must be made within 30 days of service of

summons or by 8/7/19 - Not 8/8/19.

"A general appearance by a party is equivalent to personal service of summons on such party." (Code Civ. Proc., § 410.50, subd. (a).) [8] The statutory list of acts constituting an appearance (id., § 1014 [filing an answer, demurrer, motion to strike, etc.]) is not exclusive; "rather the term may apply to various acts which, under all of the circumstances, are deemed to confer jurisdiction of the person. [Citation.] What is determinative is whether defendant takes a part in the particular action which in some manner recognizes the authority of the court to proceed." (*Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391, 1397 [250 Cal.Rptr. 87] (*Sanchez*).)

When a general appearance is made, jurisdiction can be upheld even in the absence of "minimum contacts" between the nonresident and the forum state although there was significant on-going contact in this case and as evidenced by the emails and correspondence attached to the complaint. A nonresident who appears in an action, either as plaintiff or defendant, thereby submits to the court's exercise of personal jurisdiction unless it is a special appearance. A pleading, demurrer or motion by a defendant that contests the merits of the action, or challenges the complaint on other than jurisdictional grounds like occurred

numerous times in this case, including and aside from the Notice of Removal, constitutes a General Appearance. **It is equivalent to personal service of summons on defendant for jurisdiction purposes.** see Hamilton v. Asbestos Corp., Ltd. (2000) 22 Cal.4th 1127, 1147. *Whether a defendant has made a "general appearance" is a fact-specific issue. The determinative factor is whether it "takes a part in the particular action which in some manner recognizes the authority of the court to proceed."* Hamilton v. Asbestos Corp., Ltd., supra, 22 Cal.4th at 1147; see also Mansour v. Sup.Ct. (Eidem) (1995) 38 Cal.App.4th 1750, 1756.

Although just a layman, it would seem to Appellant that Judge Green's logic in arriving at his decision seems to contradict or ignore the relevant rules and laws. At the outset of the hearing on page one of the Reporter's transcript, the Judge essentially started by stating "*This is a Motion to Quash service and a Demurrer. We don't have to get to the Demurrer because I have read the Motion to Quash service and I don't see any basis for jurisdiction in California - I've read three declarations. Two of the three are people in the 80's. One is 87. All three say they have no contacts with California at all. A couple say they have had no contacts with the Plaintiff since 2009.*"

As mentioned in Appellant(s) objection, the attachments in the initial, timely complaint (page 36 -39, 42, 44, 45 of the Clerk's transcript), contains multiple examples of on-going communication like emails, an un cashed check and a 2018 holiday card that completely contradict the declarations and as already argued, jurisdiction had been conceded to by the numerous prior General Appearances.

The Judge continued, "*You know, you either have to have general jurisdiction or specific jurisdiction. For general jurisdiction you have to have substantial systematic contacts with the state of California. For specific jurisdiction you have to have a purposeful availment of the benefits and laws of the forum state in California, and there has to be a connection between those contacts and the injury complained of, and it has to lastly be fair, just, and equitable. None of these boxes are checked. Regardless, I have no evidence of any of this stuff. Nobody presented me with anything where I could check any of it. I have no evidence from you. I just have evidence from the defense.*"

Appellant would argue that the untimely evidence from the defense that the Judge apparently heavily relied upon consisted of obviously, blatantly perjurous declarations that were completely contradicted by the evidence Appellant attached to

the initial complaint including the emails which are date stamped and provide a factual, verifiable record of on-going communication. Appellant mentioned in the initial complaint that at one stage he did not want anymore contact with Appellee Bertram and sent a text message asking Bertram to please stop contacting him as he was no longer willing to satisfy his morbid curiosity (page 13 of Clerk's transcript). Also mentioned and as per the emails, was the fact that after that, Appellee David came to visit and the relationship was rekindled (also at the urging of Francine Silver). At the time of recalling these facts in the initial complaint, it would have been impossible for Appellant to have known that the issue of jurisdiction would come up or, that in blatant contrast to the verifiable emails, phone calls and other evidence in the complaint, Appellee(s) would perjure themselves by denying having had contact. If the case had been or is allowed to go to trial, through discovery it would be blatantly clear that the declarations are completely untrue.

Appellant would argue that every single one of the elements that both Appellee(s) and Judge Green cited in their jurisdictional arguments were satisfied even though they were belatedly argued and not required. Appellee(s)' received purposeful availment of the benefits and laws of the forum state here in California, when as the emails and correspondence attached to

the initial complaint confirm, Appellee(s) contacted and visited Appellant(s) here in California and made use of beaches, hotels, restaurants and freeways etc. That more than satisfies the element of purposeful availment. There is also an obvious connection and relationship between those contacts and the injuries complained of, in fact it is that very connection that spawned the litigation in the first place.

Judge Green explained on page 2 of the reporter's transcript that for specific jurisdiction it must be fair, just and equitable. The Judge went on to state *"Can I call an 80 year old elderly when I'm 72? Well regardless, they are elderly, and I see no basis for dragging them across the country to be here*".

Appellee(s) would hardly have to be dragged here because they have access to private jets and are accustomed to first class travel and also knew or should have known they could have been haled into a California court for on going tortious acts intentionally committed here in California.

Judge Green seems to overlook the fact that decedent Appellant Francine was in her 90's and in poor physical, mental and financial health. Had she not in at least in some part been

aggravated into an earlier death than otherwise might have been expected, it would have been very unfair and inconvenient for her to have had to travel, limp and hobble to New York with her walker to adjudicate on-going torts that happened in California and should be governed by California law.

The Judge also stated that for general jurisdiction you have to have substantial systematic contacts with the state of California and again as the correspondence in the attachment to the initial complaint confirms, (page 36 -39, 42, 44, 45 of the transcript) this and all the elements mentioned by the Judge and Appellee(s) for both Specific and General jurisdiction were clearly met and moreover jurisdiction was conceded to anyway by the numerous prior General Appearances.

The United States Supreme Court has stated it has been recognized since common law times that state courts may exercise personal jurisdiction over nonresidents where certain "traditional" bases for personal jurisdiction exist. See Burnham v. Sup.Ct. (Burnham) (1990) 495 U.S. 604, 609, 110 S.Ct. 2105, 2110.

It is fair, just and equitable to receive justice in California for

torts that clearly occurred on an on-going perpetuated basis and targeted residents here in California and furthermore, Appellee(s) undoubtedly conceded to California's Jurisdiction by making numerous General Appearances prior to filing the untimely Motion to Quash. Appellant had every legal right to keep the case within the jurisdiction of California.

For all of the aforementioned reasons the motion lacked substance in every single one of it's arguments, was late, devoid of merit and should have either been automatically rejected or denied.

THE MOTION AGAINST PUNITIVE DAMAGES IS MOOT

This Motion was not addressed by the Court and does not seem like an issue. Appellee(s) failed to file a timely conforming response and their default should be entered and the case settled but in the event the case is remanded back to Superior Court for trial, it should be up to a jury to decide whether the case has merit or not and whether there is cause for punitive damages to be awarded and if so for what amount.

THE DEMURRER WAS FATALLY DEFECTIVE

The court did not address the belated demurrer but even if

timely, Plaintiff adamantly denies there was a meet and confer prior to the demurrer being filed and as required per the California Rule 3.724 duty to meet and confer. This was argued in Appellants(s)' combined objection to the demurrer and motions, none of the issues had ever been discussed so the Demurrer was fatally defective, late and devoid of merit. Code of Civil Procedure § 430.40 states **(a)** A person against whom a complaint or cross-complaint has been filed may, **within 30 days after service of the complaint** or cross-complaint, demur to the complaint or cross-complaint. **Demurrers must be filed within 30 days of service of Complaint (extensions do not extend time to demurrer).** The complaint was served on May 22, 2019 so the demurrer had to be filed by June 21, 2019. Even with an extra 10 days due to service by U.S. Priority Mail, the demurrer would have to have been filed before July 1, 2019 - Not 8/8/19. Although the court did not address the belated demurrer, it and all the arguments contained in it are void because amongst other things including their weakness, the deadline to file had passed and there was no meet and confer.

THE JUDGE LACKED IMPARTIALITY AND SHOULD HAVE RECUSED HIMSELF

In Appellant's reasonable layman opinion, Judge Green openly

expressed his bias and partiality when he stated as per the Reporter's transcript page 2 line 17 "*And purposeful availment, there's no evidence of that. And as far as whether this would be fair, just and equitable, we have New York residents, at least two of whom are elderly. Can I call an 80-year old elderly when I'm 72? well, regardless, they are elderly, and I see no basis for dragging them across the country to be here.*"

The purposeful availment that Judge Green speaks of can occur simply by using the freeway or sidewalk so it is hard to see how Judge Green could find no evidence of purposeful availment when it is blatantly clear by the emails and correspondence attached to the Initial Complaint that the Appellee(s) visited Appellant(s) here in California and availed themselves of the States resources. Whether it is fair, just or equitable to "drag" Appellee(s) across the country is a question that should have never been asked because it had already been answered when the Appellee(s) made General Appearances and conceded to California's jurisdiction but even if they had not, it would seem fair, just and equitable to hold them accountable in California for on-going torts committed in California and irrespective of their age.

When Judge Green states "*Can I call an 80-year old elderly when I'm 72? well, regardless, they are elderly, and I see no basis for*

dragging them across the country to be here.", the Judge is overtly, expressing his bias for the Appellee(s) who the Judge essentially explained are close to his age range. This is a discriminating view point that is apparently based solely on personal preference, sentiment and/or bias but not upon the relevant governing rules, laws or facts upon which an impartial decision should be made.

As far as the fairness of being "dragged" across the country goes, the Appellee(s) had no trouble traveling to California in their past visits and also have access to private jets and stay in first class hotels. The Appellee(s) live close to a local airport and there is no waiting to check in or go through security at the airport so it is hard to see why it would be that inconvenient for them to once again make it to California or how they would be "dragged" here.

Judge Green seems to have overlooked that fact that decedent Appellant Francine was in her 90's, in wrongful foreclosure litigation, under financial stress, disabled, defrauded and in poor health. Had she not been at least in some part aggravated into an earlier death than otherwise would have been expected, it would have been a huge inconvenience both physically and financially for her to have to travel, limp, hobble, use her walker or literally drag herself to New York where none of the torts had occurred

and after the Appellee(s) had already defaulted and made numerous General Appearances in this jurisdiction.

The 2020 California Rules of the Court duty to prohibit bias states: (a) To preserve the integrity and impartiality of the judicial system, each judge should: (1) Ensure fairness and that courtroom proceedings are conducted in a manner that is fair and impartial to all of the participants. (Regardless of age)

(2) Refrain from and prohibit biased conduct and in all courtroom proceedings, refrain from engaging in conduct and prohibit others from engaging in conduct that exhibits bias, including but not limited to bias based on disability, gender, race, religion, ethnicity, and sexual orientation, whether that bias is directed toward counsel, court personnel, witnesses, parties, jurors, or any other participants.

(3) Ensure unbiased, impartial decisions. "Impartial," "impartiality," and "impartially" mean the absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as the maintenance of an open mind in considering issues that may come before a judge. See Canons 1. A judge shall respect and comply with the law and shall act at all

times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

A judge must also be mindful of Canon 2A, which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the courts. If the Judge discriminates on the basis of age then he or she is clearly not impartial and should recuse him or herself from the case.

When the impartiality of the Judge might reasonably be questioned" under 28 U.S.C.A. 455(a), the court in Fong v American Airlines, Inc. (1977, DC Cal) 431 F Supp 1334, held that the legislative history of 28 U.S.C.A. 455(a) left no doubt that Congress intended to adopt an **objective standard, as opposed to the judge's own opinion of his impartiality, or lack there of.** Quoting the House Report, the court stated that disqualification for lack of impartiality must have a reasonable basis (such as age discrimination). And, added the court, decisions rendered since the adoption of the 1974 amendment to 455(a) confirmed that the charge of lack of impartiality must be grounded on facts which would create a reasonable doubt

DEFAULT JUDGMENT SHOULD HAVE BEEN ENTERED

Whether or not Judge Green lacked impartiality and whether or not any of the other arguments and pleadings made by Appellee(s) have any degree of merit should be moot because Appellee(s), despite unlimited financial resources, in house legal counsel, valid legal service and representation by a prestigious international law firm still clearly defaulted by not filing a single timely, conforming response to either the Initial Complaint or Summons and their default should be entered in the full amount of ten million dollars plus interest from the time of their 8/7/19 default until the claim is finally paid.

The deadline to file a Notice of Removal or Demurrer is not the same as a written response to a summons. The time to file a demurrer occurs 30 days after service of the Initial Complaint. CCP 430.409(a) governs demurrers and states "*Absent an extension of time, a defendant must file a demurrer to a complaint within 30 days after service of the complaint*". The Initial Complaint was mailed US Priority Mail on 5/22/19 and admittedly received on 5/24/19. This resulted in deadline to file a Demurrer of no later than 6/23/19 but the Demurrer was not filed until 8/8/19 - Too late!

The deadline to file a Notice of Removal was 30 days after receipt

of the Complaint. The Complaint was mailed by US Priority Mail on 5/22/19 and Appellee(s) admit receiving it on 5/24/19 which resulted in 6/23/19 deadline but the Notice of Removal was not filed until 7/8/19 which was 15 days past the deadline - Too Late!

The Motion to Quash was not filed until 8/8/19 and after Appellee(s) had already made numerous General Appearances, however, a motion to quash service of summons **must be filed before any answer, demurrer or other response is filed** otherwise the defendant has waived their right to object pursuant to Code of Civil Procedure section 418.10(e)(3), the motion must be filed within 30 days of service and complaint. Appellee(s) first appearance was made on 7/8/19 with the 15 day late filing of the Notice of Removal.

A pleading, demurrer or motion by a defendant that contests the merits of the action, or challenges the complaint on other than jurisdictional grounds like occurred numerous times in this case, including and aside from the Notice of Removal, constitutes a General Appearance. **It is equivalent to personal service of summons on defendant for jurisdiction purposes**. see Hamilton v. Asbestos Corp., Ltd. (2000) 22 Cal.4th 1127, 1147. By filing the Notice of Removal, a General Appearance clearly occurred and Appellant(s) were also effectively served, at the very

latest by this date and any written response was due within 30 days or by no later than 8/7/19. Appellant(s) failed to file a response until the untimely 8/8/19 filing of the Motion to Quash, Demurrer and Motion to Strike Punitive Damages, again - All too late!

Appellee(s) have consistently failed to file timely, conforming responses. The Notice of Removal, Second Peremptory Challenge, Demurrer, Declarations and Motions were all unquestionably late and absent of excusable neglect, a late response is as good as no response and is a waiver of future arguments. Because the arguments have been conceded to, there is nothing for a trial court to decide other than whether punitive damages are warranted and if so for how much.

An entry of default and default judgment should be granted in the full claim amount of ten million dollars plus statutory interest from the 8/7/19 default until the claim is finally paid.

DUE PROCESS WAS DENIED

Appellant(s) should be entitled to due process of the law and fair, just, equal treatment. The rules, laws and deadlines that the

court and its officers are charged with upholding should be enforced fairly, equally, universally and justly instead of being ignored. Appellee(s) have been allowed to file a late Notice of Removal, two Peremptory Challenges with the first being arguably late and denied but the second definitely late and also defective but errantly allowed even though only one peremptory challenge can be made. The result of the second defective challenge was that Judge Green was assigned to the case and as previously discussed he overtly expressed his lack of impartiality, there was an abuse of discretion and the Judge should have never been assigned to the case in the first place and once assigned, he should have recused himself due to his stated partiality for similarly aged litigants.

Due Process is rooted in the foundation of our judicial system and is so important that it is mentioned both in the Fifth and Fourteenth Amendment. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. The Fourteenth Amendment Section 1 states "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the **equal** protection of the laws."

Because Appellant(s) apparently did not receive equal protection of the laws and deadlines were ignored by the court, instead of Appellee(s) default being entered or a trial date set, the Motion to Quash was unfairly granted despite the numerous prior General Appearances and Appellant(s) were clearly denied due process.

CONCLUSSION

Despite essentially unlimited resources, Appellee(s) have defaulted by consistently failing to file timely, conforming responses and have thereby conceded to Appellant(s) arguments and waived their rights to future arguments. The Notice of Removal was 15 days too late and everything Appellee(s) filed after that date was also too late and therefore void.

The Superior Court ruled errantly in granting the Motion to Quash because it was filed late and jurisdiction had already been conceded to by Appellee(s) numerous General Appearances prior

To filing the Motion to Quash. The decision should be reversed, Default Judgment should be entered and granted for the full claim amount of ten million dollars plus statutory interest from the 8/7/19 default date until the claim is finally paid or else the case should be remanded back to Judge Holly Fujie from whose jurisdiction it should have never left in the first place and a trial date should be set but due to Appellee(s) consistent failure to file timely responses, it would seem Appellant's arguments have been conceded to and the only issue for a trial court to determine would be whether or not to award punitive damages and if so in what amount.

Respectfully,

Marcus Silver